

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS K. BARRY,

Plaintiff,

- vs -

CORNING NATURAL GAS CORPORATION, et al.,

Defendants.

ORDER

6:07-CV-06388 DGL

Upon the October 12, 2007, Notice of Motion by Defendant Corning Natural Gas Corporation for an Order, pursuant to Fed. R. Civ. P. 12(b)(6), dismissing Count III of the Complaint, the Declaration of John J. Field, dated October 12, 2007, and the exhibits thereto; and

Upon the October 12, 2007, Notice of Motion by Defendants The Richard M. Osborne Trust, and Richard M. Osborne, Trustee for an Order, pursuant to Fed. R. Civ. P. 12(b)(b), dismissing Counts IV and V of the Complaint, the Declaration of John J. Field, dated October 12, 2007, and the exhibits thereto; and

Upon Plaintiff's opposition to the motions, including the Declaration of Robert D. Hooks, dated November 19, 2007, and the exhibits thereto; and

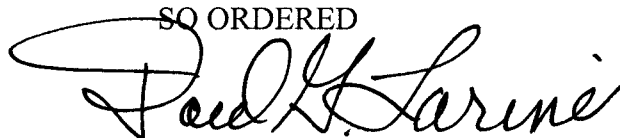
Upon the Declaration of Richard N. Selby, II, dated November 30, 2007, and the exhibits thereto; and

The matter having come before the Court on June 27, 2008, and Richard A. McGuirk, Esq. of Nixon Peabody LLP, having appeared on behalf of Defendant Corning Natural Gas Corporation and Richard N. Selby, II, of Dworken & Bernstein Co., LPA having appeared on behalf of Defendants The Richard M. Osborne Trust and Richard M. Osborne, Trustee, and Robert D. Hooks, of Woods Oviatt Gilman LLP, having appeared on behalf of Plaintiff;

The Court having issued its decision orally on June 27, 2008; it is now ORDERED that:

1. The motion by Defendant Corning Natural Gas Corporation ("Corning") for an Order, pursuant to Fed. R. Civ. P. 12(b)(6), dismissing Count III of the Complaint is granted, and Count III of the Complaint is hereby dismissed, with prejudice;
2. The motion by Defendants The Richard M. Osborne Trust, and Richard M. Osborne, Trustee for an Order, pursuant to Fed. R. Civ. P. 12(b)(b), dismissing Counts IV and V of the Complaint is granted, and Counts IV and V of the Complaint are hereby dismissed, with prejudice; and
3. Plaintiff's request for leave to replead Counts III, IV and V of the Complaint is denied.

SO ORDERED



Hon. David G. Larimer
U.S. District Court Judge

Dated: July 8, 2008

ENTER.